

PART 440—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

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APPENDIX A TO PART 440—STANDARDS FOR WEATHERIZATION MATERIALS

AUTHORITY: 42 U.S.C. 6861–6871; 42 U.S.C. 7191.

SOURCE: 49 FR 3629, Jan. 27, 1984, unless otherwise noted.

§ 440.1 Purpose and scope.

This part contains the regulations adopted by the Department of Energy to carry out a program of weatherization assistance for low-income persons established by the Energy Conservation in Existing Buildings Act of 1976, 42 U.S.C. 6861 *et seq.*, enacted as Title IV, Part A, of the Energy Conservation and Production Act, Pub.L. 94–385, 90 Stat. 1150 *et seq.*, and amended by Title II, Part 2, of the National Energy Conservation Policy Act, Pub.L. 95–619, 92 Stat. 3206 *et seq.*, by the Energy Security Act, Pub. L. 96–294, 94 Stat. 611 *et seq.*, and the State Energy Efficiency Programs Improvement Act, Pub. L. 101–440, 104 Stat. 1006 *et seq.* It is the purpose of this part to implement a weatherization assistance program to increase the energy efficiency of dwellings owned or occupied by low-income persons, reduce their total residential energy expenditures, and improve their health and safety, especially low-in-

come persons who are particularly vulnerable such as the elderly, the handicapped, and children.

[58 FR 12525, Mar. 4, 1993]

§ 440.2 Administration of grants.

Grant awards under this part shall comply with applicable law including, without limitation, the requirements of:

(a) Executive Order 12372 entitled “Intergovernmental Review of Federal Programs”, 48 FR 3130, and the DOE Regulation implementing this Executive Order entitled “Intergovernmental Review of Department of Energy Programs and Activities” (10 CFR part 1005);

(b) Office of Management and Budget Circular A–97, entitled “Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government under Title III of the Inter-Governmental Coordination Act of 1968;”

(c) Unless in conflict with provisions of this part, the DOE Financial Assistance Rule (10 CFR part 600); and

(d) Such other procedures applicable to this part as DOE may from time to time prescribe for the administration of financial assistance.

§ 440.3 Definitions.

As used in this part:

Act means the Energy Conservation in Existing Buildings Act of 1976, as amended, 42 U.S.C. 6851 *et seq.*

Assistant Secretary means the Assistant Secretary for Conservation and Renewable Energy or official to whom the Assistant Secretary’s functions may be redelegated by the Secretary.

Base Allocation means the fixed amount of funds for each State as set forth in § 440.10(b)(1).

CAA means a Community Action Agency.

Capital-Intensive furnace or cooling efficiency modifications means those major heating and cooling modifications which require a substantial amount of funds, including replacement and major repairs, but excluding such items as tune-ups, minor repairs, and filters.

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Children means dependents not exceeding 19 years or a lesser age set forth in the State plan.

Community Action Agency means a private corporation or public agency established pursuant to the Economic Opportunity Act of 1964, Pub. L. 88-452, which is authorized to administer funds received from Federal, State, local, or private funding entities to assess, design, operate, finance, and oversee antipoverty programs.

Cooling Degree Days means a population-weighted annual average of the climatological cooling degree days for each weather station within a State, as determined by DOE.

Deputy Assistant Secretary means the Deputy Assistant Secretary for Technical and Financial Assistance or any official to whom the Deputy Assistant Secretary's functions may be redelegated by the Assistant Secretary.

DOE means the Department of Energy.

Dwelling Unit means a house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters.

Elderly Person means a person who is 60 years of age or older.

Family Unit means all persons living together in a dwelling unit.

Formula Allocation means the amount of funds for each State as calculated based on the formula in § 440.10(b)(3).

Formula Share means the percentage of the total formula allocation provided to each State as calculated in § 440.10 (b)(3).

Governor means the chief executive officer of a State, including the Mayor of the District of Columbia.

Grantee means the State or other entity named in the Notification of Grant Award as the recipient.

Handicapped Person means any individual (1) who is a handicapped individual as defined in section 7(6) of the Rehabilitation Act of 1973, (2) who is under a disability as defined in section 1614(a)(3)(A) or 223(d)(1) of the Social Security Act or in section 102(7) of the Developmental Disabilities Services and Facilities Construction Act, or (3) who is receiving benefits under chapter 11 or 15 of title 38, U.S.C.

Heating Degree Days means a population-weighted seasonal average of the climatological heating degree days for each weather station within a State, as determined by DOE.

Incidental Repairs means those repairs necessary for the effective performance or preservation of weatherization materials. Such repairs include, but are not limited to, framing or repairing windows and doors which could not otherwise be caulked or weatherstripped and providing protective materials, such as paint, used to seal materials installed under this program.

Indian Tribe means any tribe, band, nation, or other organized group or community of Native Americans, including any Alaskan native village, or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, Pub. L. 92-203, 85 Stat. 688, which (1) is recognized as eligible for the special programs and services provided by the United States to Native Americans because of their status as Native Americans, or (2) is located on, or in proximity to, a Federal or State reservation or rancheria.

JTPA means the Job Training Partnership Act, 29 U.S.C. 1501 *et seq.*

Local Applicant means a CAA or other public or non profit entity unit of general purpose local government.

Low Income means that income in relation to family size which:

(1) Is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, except that the Secretary may establish a higher level if the Secretary, after consulting with the Secretary of Agriculture and the Secretary of Health and Human Services, determines that such a higher level is necessary to carry out the purposes of this part and is consistent with the eligibility criteria established for the weatherization program under section 222(a)(12) of the Economic Opportunity Act of 1964;

(2) Is the basis on which cash assistance payments have been paid during the preceding twelve month-period under titles IV and XVI of the Social Security Act or applicable State or local law; or

(3) If a State elects, is the basis for eligibility for assistance under the Low Income Home Energy Assistance Act of 1981, provided that such basis is at least 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget.

Native American means a person who is a member of an Indian tribe.

Program Allocation means the base allocation plus formula allocation for each State.

Relevant Reporting Period means the Federal fiscal year beginning on October 1 and running through September 30 of the following calendar year.

Rental Dwelling Unit means a dwelling unit occupied by a person who pays rent for the use of the dwelling unit.

Residential Energy Expenditures means the average annual cost of purchased residential energy, including the cost of renewable energy resources.

Secretary means the Secretary of the Department of Energy.

Separate Living Quarters means living quarters in which the occupants do not live and eat with any other persons in the structure and which have either direct access from the outside of the building or through a common hall or complete kitchen facilities for the exclusive use of the occupants. The occupants may be a single family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements, and includes shelters for homeless persons.

Shelter means a dwelling unit or units whose principal purpose is to house on a temporary basis individuals who may or may not be related to one another and who are not living in nursing homes, prisons, or similar institutional care facilities.

Single-Family Dwelling Unit means a structure containing no more than one dwelling unit.

Skirting means material used to border the bottom of a dwelling unit to prevent infiltration.

State means each of the States and the District of Columbia.

Subgrantee means an entity managing a weatherization project which receives a grant of funds awarded under this part from a grantee.

Support Office Director means the Director of the DOE Field Support Office with the responsibility for grant administration or any official to whom that function may be redelegated by the Assistant Secretary.

Total Program Allocations means the annual appropriation less funds reserved for training and technical assistance.

Tribal Organization means the recognized governing body of any Indian tribe or any legally established organization of Native Americans which is controlled, sanctioned, or chartered by such governing body.

Unit of General Purpose Local Government means any city, county, town, parish, village, or other general purpose political subdivision of a State.

Vestibule means an enclosure built around a primary entry to a dwelling unit.

Weatherization Materials mean:

(1) Caulking and weatherstripping of doors and windows;

(2) Furnace efficiency modifications including, but not limited to—

(i) Replacement burners, furnaces, or boilers or any combination thereof;

(ii) Devices for minimizing energy loss through heating system, chimney, or venting devices; and

(iii) Electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(3) Cooling efficiency modifications including, but not limited to—

(i) Replacement air conditioners;

(ii) Ventilation equipment;

(iii) Screening and window films; and

(iv) Shading devices.

Weatherization Project means a project conducted in a single geographical area which undertakes to weatherize dwelling units that are energy inefficient.

[49 FR 3629, Jan. 27, 1984, as amended at 50 FR 712, Jan. 4, 1985; 50 FR 49917, Dec. 5, 1985; 55 FR 41325, Oct. 10, 1990; 58 FR 12525, Mar. 4, 1993; 60 FR 29480, June 5, 1995]

§ 440.10 Allocation of funds.

(a) DOE shall allocate financial assistance for each State from sums appropriated for any fiscal year, upon annual application.

(b) Based on total program allocations at or above the amount of total

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program allocations under Pub. L. 103-332, DOE shall determine the program allocation for each State from available funds as follows:

(1) Allocate to each State a "Base Allocation" as listed in Table 1.

TABLE 1

Alabama	1,636,000
Alaska	1,425,000
Arkansas	1,417,000
Arizona	760,000
California	4,404,000
Colorado	4,574,000
Connecticut	1,887,000
Delaware	409,000
District of Columbia	487,000
Florida	761,000
Georgia	1,844,000
Hawaii	120,000
Idaho	1,618,000
Illinois	10,717,000
Indiana	5,156,000
Iowa	4,032,000
Kansas	1,925,000
Kentucky	3,615,000
Louisiana	912,000
Maine	2,493,000
Maryland	1,963,000
Massachusetts	5,111,000
Michigan	12,346,000
Minnesota	8,342,000
Mississippi	1,094,000
Missouri	4,615,000
Montana	2,123,000
Nebraska	2,013,000
Nevada	586,000
New Hampshire	1,193,000
New Jersey	3,775,000
New Mexico	1,519,000
New York	15,302,000
North Carolina	2,853,000
North Dakota	2,105,000
Ohio	10,665,000
Oklahoma	1,846,000
Oregon	2,320,000
Pennsylvania	11,457,000
Rhode Island	878,000
South Carolina	1,130,000
South Dakota	1,561,000
Tennessee	3,218,000
Texas	2,999,000
Utah	1,692,000
Vermont	1,014,000
Virginia	2,970,000
Washington	3,775,000
West Virginia	2,573,000
Wisconsin	7,061,000
Wyoming	967,000
Total	171,258,000

(2) Subtract 171,258,000 from total program allocations.

(3) Calculate each State's formula share as follows:

(i) Divide the number of "Low Income" households in each State by the number of "Low Income" households in the United States and multiply by 100.

(ii) Divide the number of "Heating Degree Days" for each State by the median "Heating Degree Days" for all States.

(iii) Divide the number of "Cooling Degree Days" for each State by the median "Cooling Degree Days" for all States, then multiply by 0.1.

(iv) Calculate the sum of the two numbers from paragraph (b)(3)(ii) and (iii) of this section.

(v) Divide the residential energy expenditures for each State by the number of households in the State.

(vi) Divide the sum of the residential energy expenditures for the States in each Census division by the sum of the households for the States in that division.

(vii) Divide the quotient from paragraph (b)(3)(v) of this section by the quotient from paragraph (b)(3)(vi) of this section.

(viii) Multiply the quotient from paragraph (b)(3)(vii) of this section for each State by the residential energy expenditures per low-income household for its respective Census division.

(ix) Divide the product from paragraph (b)(3)(viii) of this section for each State by the median of the products of all States.

(x) Multiply the results for paragraph (b)(3)(i), (iv) and (ix) of this section for each State.

(xi) Divide the product in paragraph (b)(3)(x) of this section for each State by the sum of the products in paragraph (b)(3)(x) of this section for all States.

(4) Calculate each State's program allocation as follows:

(i) Multiply the remaining funds calculated in paragraph (b)(2) of this section by the formula share calculated in paragraph (b)(3)(xi) of this section.

(ii) Add the base allocation from paragraph (b)(1) of this section to the product of paragraph (b)(4)(i) of this section.

(c) Should total program allocations for any fiscal year fall below the total program allocations under Pub. L. 103-

332, then each State's program allocation shall be reduced from its allocated amount under Pub. L. 103–332 by the same percentage as total program allocations for the fiscal year fall below the total program allocations under Pub. L. 103–332.

(d) All data sources used in the development of the formula are publicly available. The relevant data is available from the Bureau of the Census, the Department of Energy's Energy Information Administration and the National Oceanic and Atmospheric Administration.

(e) Should updates to the data used in the formula become available in any fiscal year, these changes would be implemented in the formula in the following program year.

(f) DOE may reduce the program allocation for a State by the amount DOE determines cannot be reasonably expended by a grantee to weatherize dwelling units during the budget period for which financial assistance is to be awarded. In reaching this determination, DOE will consider the amount of unexpended financial assistance currently available to a grantee under this part and the number of dwelling units which remains to be weatherized with the unexpended financial assistance.

(g) DOE may increase the program allocation of a State by the amount DOE determines the grantee can expend to weatherize additional dwelling units during the budget period for which financial assistance is to be awarded.

(h) The Support Office Director shall notify each State of the program allocation for which that State is eligible to apply.

[60 FR 29480, June 5, 1995]

§ 440.11 Native Americans.

(a) Notwithstanding any other provision of this part, the Support Office Director may determine, after taking into account the amount of funds made available to a State to carry out the purposes of this part, that:

(1) The low-income members of an Indian tribe are not receiving benefits under this part equivalent to the assistance provided to other low-income persons in the State under this part and

(2) The low-income members of such tribe would be better served by means of a grant made directly to provide such assistance.

(b) In any State for which the Support Office Director shall have made the determination referred to in paragraph (a) of this section, the Support Office Director shall reserve from the sums that would otherwise be allocated to the State under this part not less than 100 percent, or more than 150 percent, of an amount which bears the same ratio to the State's allocation for the fiscal year involved as the population of all low-income Native Americans for whom a determination under paragraph (a) of this section has been made bears to the population of all low-income persons in the State.

(c) The Support Office Director shall make the determination prescribed in paragraph (a) of this section in the event a State:

(1) Does not apply within the sixty-day time period prescribed in § 440.12(a);

(2) Recommends that direct grants be made for low-income members of an Indian tribe as provided in § 440.12(b)(5);

(3) Files an application which DOE determines, in accordance with the procedures in § 440.30, not to make adequate provision for the low-income members of an Indian tribe residing in the State; or

(4) Has received grant funds and DOE determines, in accordance with the procedures in § 440.30, that the State has failed to implement the procedures required by § 440.16(6).

(d) Any sums reserved by the Support Office Director pursuant to paragraph (b) of this section shall be granted to the tribal organization serving the individuals for whom the determination has been made, or where there is no tribal organization, to such other entity as the Support Office Director determines is able to provide adequate weatherization assistance pursuant to this part. Where the Support Office Director intends to make a grant to an organization to perform services benefiting more than one Indian tribe, the approval of each Indian tribe shall be a prerequisite for the issuance of a notice of grant award.

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(e) Within 30 days after the Support Office Director has reserved funds pursuant to paragraph (b) of this section, the Support Office Director shall give written notice to the tribal organization or other qualified entity of the amount of funds reserved and its eligibility to apply therefor.

(f) Such tribal organization or other qualified entity shall thereafter be treated as a unit of general purpose local government eligible to apply for funds hereunder, pursuant to the provisions of § 440.13.

[49 FR 3629, Jan. 27, 1984, as amended at 58 FR 12529, Mar. 4, 1993]

§ 440.12 State application.

(a) To be eligible for financial assistance under this part, a State shall submit an application to DOE in conformity with the requirements of this part not later than 60 days after the date of notice to apply is received from the Support Office Director. After receipt of an application for financial assistance or for approval of an amendment to a State plan, the Support Office Director may request the State to submit within a reasonable period of time any revisions necessary to make the application complete or to bring the application into compliance with the requirements of this part. The Support Office Director shall attempt to resolve any dispute over the application informally and to seek voluntary compliance. If a State fails to submit timely appropriate revisions to complete the application, the Support Office Director may reject the application as incomplete in a written decision, including a statement of reasons, which shall be subject to administrative review under § 440.30 of this part.

(b) Each application shall include:

(1) The name and address of the State agency or office responsible for administering the program;

(2) A copy of the final State plan prepared after notice and a public hearing in accordance with § 440.14(a), except that an application by a local applicant need not include a copy of the final State plan;

(3) The budget for total funds applied for under the Act, which shall include a justification and explanation of any amounts requested for expenditure pur-

suant to § 440.18(d) for State administration;

(4) The total number of dwelling units proposed to be weatherized with grant funds during the budget period for which assistance is to be awarded—

(i) With financial assistance previously obligated under this part, and

(ii) With the program allocation to the State;

(5) A recommendation that a tribal organization be treated as a local applicant eligible to submit an application pursuant to § 440.13(b), if such a recommendation is to be made;

(6) A monitoring plan which shall indicate the method used by the State to insure the quality of work and adequate financial management control at the subgrantee level;

(7) A training and technical assistance plan which shall indicate how funds for training and technical assistance will be used; and

(8) Any further information which the Secretary finds necessary to determine whether an application meets the requirements of this part.

(c) On or before 60 days from the date that a timely filed application is complete, the Support Office Director shall decide whether DOE shall approve the application. The Support Office Director may—

(1) Approve the application in whole or in part to the extent that the application conforms to the requirements of this part;

(2) Approve the application in whole or in part subject to special conditions designed to ensure compliance with the requirements of this part; or

(3) Disapprove the application if it does not conform to the requirements of this part.

(Approved by the Office of Management and Budget under control number 1904-0047)

[49 FR 3629, Jan. 27, 1984, as amended at 50 FR 712, Jan. 4, 1985; 55 FR 41325, Oct. 10, 1990; 58 FR 12529, Mar. 4, 1993; 60 FR 29481, June 5, 1995]

§ 440.13 Local applications.

(a) The Support Office Director shall give written notice to all local applicants throughout a State of their eligibility to apply for financial assistance under this part in the event:

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(1) A State, within which a local applicant is situated, fails to submit an application within 60 days after notice in accordance with § 440.12(a) or

(2) The Support Office Director finally disapproves the application of a State, and, under § 440.30, either no appeal is filed or the Support Office Director's decision is affirmed.

(b) To be eligible for financial assistance, a local applicant shall submit an application pursuant to § 440.12(b) to the Support Office Director within 30 days after receiving the notice referred to in paragraph (a) of this section.

(c) In the event one or more local applicants submits an application for financial assistance to carry out projects in the same geographical area, the Support Office Director shall hold a public hearing with the same procedures that apply under section § 440.14(a).

(d) Based on the information provided by a local applicant and developed in any hearing held under paragraph (c) of this section, the Support Office Director shall determine in writing whether to award a grant to carry out one or more weatherization projects.

(e) If there is an adverse decision in whole or in part under paragraph (d) of this section, that decision is subject to administrative review under § 440.30 of this part.

(f) If, after a State application has been finally disapproved by DOE and the Support Office Director approves local applications under this section, the Support Office Director may reject a new State application in whole or in part as disruptive and untimely without prejudice to submission of an application for the next program year.

(Approved by the Office of Management and Budget under control number 1904-0047)

[49 FR 3629, Jan. 27, 1984, as amended at 58 FR 12525, 12529, Mar. 4, 1993]

§ 440.14 State plans.

(a) Before submitting an application, a State shall give not less than 10 days notice of hearing, reasonably calculated to inform prospective subgrantees, and shall conduct one or more public hearing for the purpose of receiving comments on a proposed State plan. The proposed State plan

shall identify and describe proposed weatherization projects, including a statement of proposed subgrantees and the amount each will receive; shall address the other items contained in paragraph (b) of this section; and shall be made available throughout the State prior to the hearing. The notice for the hearing shall specify that copies of the plan are available and how they may be obtained. A transcript of the hearings shall be prepared and written submission of views and data shall be accepted for the record.

(b) Subsequent to the hearing, the State shall prepare a final State plan which shall identify and describe:

(1) The production schedule for the State, which shall indicate projected expenditures and the number of dwelling units which are expected to be weatherized each quarter during the program year;

(2) An estimate of the number of dwelling units expected to be weatherized during the program year by category to include:

(i) Single-family and multi-family residences;

(ii) Elderly persons' residences;

(iii) Handicapped persons' residences;

(iv) Renters' residences;

(v) If Native Americans do not receive direct grants under § 440.11, Native American residences; and

(vi) Children's residences, if the State selects this category as a priority with paragraphs (b)(2)(ii) and (b)(2)(iii) of this section.

(3) The climatic conditions within the State;

(4) The type of weatherization work to be done;

(5) An estimate of the amount of energy to be conserved;

(6) An estimate of the number of eligible dwelling units in which the elderly reside;

(7) An estimate of the number of eligible dwelling units in which the handicapped reside;

(8) Each area to be served by a weatherization project within the State, and shall include for each area:

(i) The tentative allocation;

(ii) The number of dwelling units expected to be weatherized during the

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program year, and the number of previously weatherized units expected to be weatherized;

(iii) The estimated number of rental dwelling units to be weatherized; and

(iv) Sources of labor.

(9) The manner in which the State plan is to be implemented, and shall include:

(i) An analysis of the existence and effectiveness of any weatherization project being carried out by a subgrantee;

(ii) An explanation of the method used to select each area to be served by a weatherization project;

(iii) The extent to which priority will be given to the weatherization of single-family or other high energy consuming dwelling units;

(iv) The amount of non-Federal resources to be applied to the program;

(v) The amount of Federal resources, other than DOE weatherization grant funds, to be applied to the program;

(vi) The amount of weatherization grant funds allocated to the State under this part;

(vii) The expected average cost per dwelling to be weatherized, taking into account the total number of dwellings to be weatherized and the total amount of funds, Federal and non-Federal, expected to be applied to the program;

(viii) The average amount of the DOE funds specified in § 440.18(c) (1) through (11) to be applied to any dwelling unit;

(ix) The average amount of DOE funds to be applied to any dwelling unit for weatherization materials as specified in § 440.18(c)(1);

(x) The procedures used by the State for providing additional administrative funds to qualified subgrantees as specified in § 440.18(d).

(xi) Procedures for determining the most cost-effective measures in a dwelling unit or a statement that Project Retro-Tech or another DOE-approved audit will be used;

(xii) The definition of "low income" which the State has chosen for use statewide for determining eligibility under § 440.22(a).

(xiii) The definition of "children" which the State has chosen consistent with § 440.3.

(xiv) The amount of Federal funds to be used, and an explanation of how

they will be used, to increase the amount of weatherization assistance that the State obtains from non-Federal sources, including private sources, and the expected leveraging effect to be accomplished.

(Approved by the Office of Management and Budget under control number 1904-0047)

[49 FR 3629, Jan. 27, 1984, as amended at 50 FR 712, Jan. 4, 1985; 58 FR 12526, Mar. 4, 1993; 60 FR 29481, June 5, 1995]

§ 440.15 Subgrantees.

(a) The grantee shall ensure that:

(1) Each subgrantee is a CAA or other public or nonprofit entity;

(2) Each subgrantee is selected on the basis of public comment received during a public hearing conducted pursuant to § 440.14(a) and other appropriate findings regarding:

(i) The subgrantee's experience and performance in weatherization or housing renovation activities;

(ii) The subgrantee's experience in assisting low-income persons in the area to be served; and

(iii) The subgrantee's capacity to undertake a timely and effective weatherization program.

(3) In selecting a subgrantee, preference is given to any CAA or other public or nonprofit entity which has, or is currently administering, an effective program under this part or under title II of the Economic Opportunity Act of 1964, with program effectiveness evaluated by consideration of factors including, but not necessarily limited to, the following:

(i) The extent to which the past or current program achieved or is achieving weatherization goals in a timely fashion;

(ii) The quality of work performed by the subgrantee;

(iii) The number, qualifications, and experience of the staff members of the subgrantee; and

(iv) The ability of the subgrantee to secure volunteers, training participants, and public service employment workers pursuant to JTPA.

(b) The grantee shall ensure that the funds received under this part will be allocated to the entities selected in accordance with paragraph (a) of this section, such that funds will be allocated

to areas on the basis of the relative need for a weatherization project by low-income persons.

(c) If DOE finds that a subgrantee selected to undertake weatherization activities under this part has failed to comply substantially with the provisions of the Act or this part and should be replaced, such finding shall be treated as a finding under § 440.30(i) for purposes of § 440.30.

(d) Any new or additional subgrantee shall be selected at a hearing in accordance with § 440.14(a) and upon the basis of the criteria in paragraph (a) of this section.

(e) A State may terminate financial assistance under a subgrant agreement for a grant period only in accordance with established State procedures that provide to the subgrantee appropriate notice of the State's reasons for termination and afford the subgrantee an adequate opportunity to be heard.

[49 FR 3629, Jan. 27, 1984, as amended at 55 FR 41326, Oct. 10, 1990; 58 FR 12526, Mar. 4, 1993]

§ 440.16 Minimum program requirements.

Prior to the expenditure of any grant funds each grantee shall develop, publish, and implement procedures to ensure that:

(a) No dwelling unit may be weatherized without documentation that the dwelling unit is an eligible dwelling unit as provided in § 440.22;

(b) Priority is given to identifying and providing weatherization assistance to elderly and handicapped low-income persons and such priority as the applicant determines is appropriate is given to dwelling units containing children and to single-family or other high-energy-consuming dwelling units;

(c) Financial assistance provided under this part will be used to supplement, and not supplant, State or local funds, and, to the maximum extent practicable as determined by DOE, to increase the amounts of these funds that would be made available in the absence of Federal funds provided under this part;

(d) To the maximum extent practicable, the grantee will secure the services of volunteers when such personnel are generally available, training

participants and public service employment workers, pursuant to JTPA, to work under the supervision of qualified supervisors and foremen;

(e) To the maximum extent practicable, the use of weatherization assistance shall be coordinated with other Federal, State, local, or privately funded programs in order to improve energy efficiency and to conserve energy;

(f) The low-income members of an Indian tribe shall receive benefits equivalent to the assistance provided to other low-income persons within a State unless the grantee has made the recommendation provided in § 440.12(b)(5);

(g) No dwelling unit may be reported to DOE as completed until all weatherization materials have been installed and the subgrantee, or its authorized representative, has performed a final inspection(s) including any mechanical work performed and certified that the work has been completed in a workmanlike manner and in accordance with the priority determined by the audit procedures required by § 440.21; and

(h) Subgrantees limit expenditure of funds under this part for installation of materials (other than weatherization materials) to abate energy-related health and safety hazards, to a list of types of such hazards, permissible abatement materials and their costs which is submitted, and updated as necessary at the same time as an annual application under § 440.12 of this part and which DOE shall approve if—

(1) Elimination of such hazards are necessary before, or as a result of, installation of weatherization materials; and

(2) The grantee sets forth a limitation on the percent of average dwelling unit costs which may be used to abate such hazards which is reasonable in light of the primary energy conservation purpose of this part;

(i) The benefits of weatherization to occupants of rental units are protected in accordance with § 440.22(b)(3) of this part.

(Approved by the Office of Management and Budget under control number 1904-0047)

[49 FR 3629, Jan. 27, 1984, as amended at 58 FR 12526, Mar. 4, 1993]

§ 440.17 Policy Advisory Council.

(a) Prior to the expenditure of any grant funds, a State policy advisory council shall be established by a State or by the Support Office Director if a State does not participate in the program which:

(1) Has special qualifications and sensitivity with respect to solving the problems of low-income persons, including the weatherization and energy conservation problems of these persons;

(2) Is broadly representative of organizations and agencies, including consumer groups that represent low-income persons, particularly elderly and handicapped low-income persons and low-income Native Americans, in the State or geographical area in question; and

(3) Has responsibility for advising the appropriate official or agency administering the allocation of financial assistance in the State or area with respect to the development and implementation of a weatherization assistance program.

[49 FR 3629, Jan. 27, 1984, as amended at 58 FR 12529, Mar. 4, 1993]

§ 440.18 Allowable expenditures.

(a) An average of at least 40 percent of the funds provided in a State under this part for weatherization materials, labor, and related matters included in paragraphs (c)(1) through (9) of this section shall be spent for weatherization materials, except if DOE approves a State's application to waive the 40 percent requirement under § 440.21(h).

(b) The expenditure of financial assistance provided under this part for labor, weatherization materials, and related matters included in paragraphs (c)(1) through (9) and (c)(15) of this section shall not exceed an average of \$1,600 per dwelling unit weatherized in the State, except as adjusted as follows:

(1) The \$1,600 average will be adjusted annually by DOE beginning in calendar year 1991 by increasing the limitation by an amount equal to:

(i) The limitation amount for the previous year, multiplied by

(ii) The lesser of:

(A) The percentage increase in the Consumer Price Index (all items, United States city average) for the most recent calendar year completed before the beginning of the year for which the determination is being made, or

(B) Three percent.

(2) In addition to the average per-dwelling-unit limitation applicable in a State under this section, DOE shall, upon application by a State, establish a separate average per-dwelling-unit limitation for dwelling units in such States which conform to program requirements and, in addition to any other weatherization modifications, have capital-intensive furnace or cooling efficiency modifications as defined in § 440.3 made under this part. The average per-dwelling-unit limitation applicable in a State which meets these requirements shall not exceed an amount equal to:

(i) The amount permitted for the expenditure of financial assistance for labor, weatherization materials, and related matters for dwelling units in such State in paragraphs (c) (1) through (9) and (c)(15) of this section plus

(ii) An amount determined by the State to be the average amount that is appropriate for capital-intensive furnace or cooling efficiency modifications of dwelling units of the type assisted under this part in such State and approved by DOE.

(c) Allowable expenditures under this part include only:

(1) The cost of purchase and delivery of weatherization materials;

(2) Labor costs, in accordance with § 440.19;

(3) Transportation of weatherization materials, tools, equipment, and work crews to a storage site and to the site of weatherization work;

(4) Maintenance, operation, and insurance of vehicles used to transport weatherization materials;

(5) Maintenance of tools and equipment;

(6) Purchase or annual lease of tools, equipment, and vehicles, except that any purchase of vehicles shall be referred to DOE for prior approval in every instance;

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(7) Employment of on-site supervisory personnel;

(8) Storage of weatherization materials, tools, and equipment;

(9) The cost of incidental repairs if such repairs are necessary to make the installation of weatherization materials effective;

(10) The cost of liability insurance for weatherization projects for personal injury and for property damage;

(11) The cost of carrying out low-cost/no-cost weatherization activities in accordance with § 440.20;

(12) The cost of weatherization program financial audits as required by § 440.23(d);

(13) Allowable administrative expenses under paragraph (d) of this section; and

(14) Funds used for leveraging activities in accordance with § 440.14(b)(9)(xiv); and

(15) The cost of eliminating health and safety hazards elimination of which is necessary before, or because of, installation of weatherization materials.

(d) Not more than 10 percent of any grant made to a State may be used by the grantee and subgrantees for administrative purposes in carrying out duties under this part, except that not more than 5 percent may be used by the State for such purposes, and not less than 5 percent must be made available to subgrantees by States. A State may provide in its annual plan for recipients of grants of less than \$350,000 to use up to an additional 5 percent of such grants for administration if the State has determined that such recipient requires such additional amount to implement effectively the administrative requirements established by DOE pursuant to this part.

(e) No grant funds awarded under this part shall be used for any of the following purposes:

(1) To weatherize a dwelling unit which is designated for acquisition or clearance by a Federal, State, or local program within 12 months from the date weatherization of the dwelling unit would be scheduled to be completed; or

(2) To install or otherwise provide weatherization materials for a dwelling

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unit weatherized previously with grant funds under this part, except:

(i) As provided under § 440.20;

(ii) If such dwelling unit has been damaged by fire, flood, or act of God and repair of the damage to weatherization materials is not paid for by insurance; or

(iii) That dwelling units partially weatherized under this part or under other Federal programs during the period September 30, 1975, through September 30, 1985, may receive further financial assistance for weatherization under this part. While DOE will continue to require these homes to be reported separately, States may count these homes as completions for the purposes of compliance with the per-home expenditure limit in § 440.18. Each dwelling unit must receive a new energy audit which takes into account any previous energy conservation improvements to the dwelling.

[58 FR 12526, Mar. 4, 1993]

§ 440.19 Labor.

(a) Payments for labor costs under § 440.18(c)(2) shall consist of:

(1) Payments permitted by the Department of Labor to supplement wages paid to training participants and public service employment workers pursuant to JTPA and

(2) Payments to employ labor (particularly persons eligible for training under JTPA) or to engage a contractor (particularly a nonprofit organization or a business owned by disadvantaged individuals which performs weatherization services), provided a grantee has determined an adequate number of volunteers, training participants, and public service employment workers, assisted pursuant to JTPA, are not available to weatherize dwelling units for a subgrantee under the supervision of qualified supervisors.

[49 FR 3629, Jan. 27, 1984, as amended at 50 FR 713, Jan. 4, 1985; 58 FR 12527, Mar. 4, 1993]

§ 440.20 Low-cost/no-cost weatherization activities.

(a) An eligible dwelling unit may be weatherized without regard to the limitations contained in § 440.18 (e)(2) or § 440.21(b) from funds designated by the grantee for carrying out low-cost/no-

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cost weatherization activities provided:

(1) Inexpensive weatherization materials are used, such as water flow controllers, furnace or cooling filters, or items which are primarily directed toward reducing infiltration, including weatherstripping, caulking, glass patching, and insulation for plugging and

(2) No labor paid with funds provided under this part is used to install weatherization materials referred to in paragraph (a)(1) of this section.

(b) A maximum of 10 percent of the amount allocated to a subgrantee, not to exceed \$50 in materials costs per dwelling unit, may be expended to carry out low-cost/no-cost weatherization activities, unless the Support Office Director approves a higher expenditure per dwelling unit.

[49 FR 3629, Jan. 27, 1984, as amended at 50 FR 713, Jan. 4, 1985; 58 FR 12529, Mar. 4, 1993]

§ 440.21 Standards and techniques for weatherization.

(a) Paragraphs (b) through (g) of this section set forth the energy audit procedures which apply to the grantees and subgrantees who are subject to the 40 percent material cost requirement in § 440.18(a) of this part. Paragraphs (b), (d), (e), and (h) through (k) of this section set forth the requirements for the energy audit procedures which, if satisfied in the State plan, warrant approval of a State's application to waive the 40 percent material cost requirement in § 440.18(a) of this part.

(b) Only weatherization materials which are listed in appendix A and which meet or exceed standards prescribed in appendix A to this part shall be purchased with funds provided under this part, except that DOE may approve an unlisted material upon application from any State.

(c) The most cost-effective weatherization materials for each dwelling unit shall be determined by audit procedures using the following formula:

(1) The cost of fuel saved per year by installing a weatherization material in a dwelling unit;

(2) Multiplied by the appropriate lifetime of the weatherization material; and

(3) Divided by the cost of the weatherization material and the cost of the installation of the weatherization material.

(d) The computation of the cost of fuel saved per year must take into account the number of heating or cooling degree days in the area of which the computation is being made and must otherwise use reasonable methods and assumptions.

(e) The figures used for the lifetime of the materials and for the costs of materials and cost of the installation of the materials must be generally accepted in the relevant trade.

(f) The weatherization materials which shall be installed first are those which are determined to be the most cost effective using the formula in paragraph (c) of this section.

(g) The audit procedures used in Project Retro-Tech to determine the most cost-effective weatherization materials comply with this section. The grantee or subgrantee may use other audit procedures to determine the most cost-effective weatherization materials, provided that these procedures comply with this section and are approved by the Support Office Director prior to their use. A grantee or subgrantee may use results obtained from audits conducted under the Residential Conservation Service Program as part of the audit procedures which have been approved by the Support Office Director.

(h) The energy audit procedures must—

(1) Consider the rate of energy use;

(2) Address significant heating and cooling needs;

(3) Make provision for use of advanced diagnostic and assessment techniques which DOE has determined are consistent with sound engineering practices;

(4) Determine energy use from actual energy bills or by generally accepted engineering calculations;

(5) Consistent with paragraphs (d) and (e) of this section, determine that each weatherization material is cost effective by ensuring that the net fuel cost savings over the lifetime of such weatherization material, discounted to present value in accordance with paragraph (i) of this section, to the costs to

be claimed as allowable under § 440.18(c)(1), (2), and (7), and any other significant, related cost required to be included by a State, is greater than or equal to one;

(6) Assign priorities among weatherization materials in descending order of their cost effectiveness ratios calculated under paragraph (h)(5) of this section;

(i) After adjusting those ratios for interaction between architectural and mechanical weatherization materials by decreasing the estimated fuel cost savings for a lower priority weatherization material in light of fuel cost savings for a related higher priority weatherization material; and

(ii) Eliminating any weatherization material if its cost effectiveness ratio, as adjusted under paragraph (h)(6) of this section, is less than one;

(7) Determine that the total conservation investment has a positive rate of return by ensuring that the ratio of the cumulative net fuel cost savings of all weatherization materials, adjusted for interaction between architectural and mechanical weatherization materials if any, to the cumulative costs included under paragraph (h)(5) of this section and the costs to be claimed as allowable under § 440.18(c)(9), is greater than or equal to one;

(8) Identify health and safety hazards to be abated with DOE funds in compliance with the State's DOE-approved health and safety procedures under § 440.16(h); and

(9) Treat the dwelling unit as a whole system by examining its heating and cooling system, its air exchange system and its occupants' living habits and needs, and making necessary adjustments to the priority of weatherization materials with adequate documentation of the reasons for such an adjustment.

(i) The energy audit must provide for use of the annually adjusted discount rate provided by DOE except that a State may keep that rate constant up to 5 years or may use a reasonable higher real discount rate. Subject to a ceiling of 10 percent and floor of 3 percent and subject to adjustment by DOE region for a rate of fuel cost escalation predicted by the DOE Energy Informa-

tion Administration, DOE shall calculate annually the adjusted discount rate, for use under paragraph (h) of this section as a 12-month average of the composite yields of all outstanding U.S. Treasury bonds neither due nor callable in less than 10 years, as most recently reported by the Federal Reserve, adjusted to exclude estimated increases in the general level of prices consistent with projections of inflation in the most recent Economic Report of the President's Council of Economic Advisers.

(j) For typical dwelling units without unusual energy consuming characteristics which significantly alter typical energy usage, energy audits may be accomplished by using a priority list developed by conducting, in compliance with paragraph (h) of this section, site-specific energy audits of a representative sample of typical dwelling units for each major dwelling type covered by the State's weatherization program. Priority lists developed in accordance with this paragraph must be revalidated by conducting a representative sample of site-specific energy audits every 5 years.

(k) Subject to DOE approval, a State may use as a part of an energy audit, a list of presumptively cost effective general heat waste reduction weatherization materials and the circumstance under which such materials may be presumed cost effective without need for further audit justification if those materials are shown to be cost effective in typical dwelling units for major dwelling unit types in the State based on documentation of a representative number of site-specific energy audits.

[58 FR 12527, Mar. 4, 1993]

§ 440.22 Eligible dwelling units.

(a) A dwelling unit shall be eligible for weatherization assistance under this part if it is occupied by a family unit:

(1) Whose income is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget;

(2) Which contains a member who has received cash assistance payments under Title IV or XVI of the Social Security Act or applicable State or local

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law at any time during the 12-month period preceding the determination of eligibility for weatherization assistance; or

(3) If the State elects, is eligible for assistance under the Low-Income Home Energy Assistance Act of 1981, provided that such basis is at least 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget.

(b) A subgrantee may weatherize a building containing rental dwelling units using financial assistance for dwelling units eligible for weatherization assistance under paragraph (a) of this section, where:

(1) The subgrantee has obtained the written permission of the owner or his agent;

(2) Not less than 66 percent (50 percent for duplexes and four-unit buildings) of the dwelling units in the building:

(i) Are eligible dwelling units, or

(ii) Will become eligible dwelling units within 180 days under a Federal, State, or local government program for rehabilitating the building or making similar improvements to the building; and

(3) The grantee has established procedures for dwellings which consist of a rental unit or rental units to ensure that:

(i) The benefits of weatherization assistance in connection with such rental units, including units where the tenants pay for their energy through their rent, will accrue primarily to the low-income tenants residing in such units;

(ii) For a reasonable period of time after weatherization work has been completed on a dwelling containing a unit occupied by an eligible household, the tenants in that unit (including households paying for their energy through their rent) will not be subjected to rent increases unless those increases are demonstrably related to matters other than the weatherization work performed;

(iii) The enforcement of paragraph (b)(3)(ii) of this section is provided through procedures established by the State by which tenants may file complaints, and owners, in response to such complaints, shall demonstrate that the

rent increase concerned is related to matters other than the weatherization work performed; and

(iv) No undue or excessive enhancement shall occur to the value of the dwelling units.

(c) In order to secure the Federal investment made under this part and address the issues of eviction from and sale of property receiving weatherization materials under this part, States may seek landlord agreement to placement of a lien or to other contractual restrictions;

(d) As a condition of having assistance provided under this part with respect to multifamily buildings, a State may require financial participation, when feasible, from the owners of such buildings. Such financial participation shall not be reported as program income, nor will it be treated as if it were appropriated funds. The funds contributed by the landlord shall be expended in accordance with the agreement between the landlord and the weatherization agency.

(e) In devising procedures under paragraph (b)(3)(iii) of this section, States should consider requiring use of alternative dispute resolution procedures including arbitration.

(f) A State may weatherize shelters. For the purpose of determining how many dwelling units exist in a shelter, a grantee may count each 800 square feet of the shelter as a dwelling unit or it may count each floor of the shelter as a dwelling unit.

[58 FR 12528, Mar. 4, 1993]

§ 440.23 Oversight, training, and technical assistance.

(a) The Secretary and the appropriate Support Office Director, in coordination with the Secretary of Health and Human Services, shall monitor and evaluate the operation of projects carried out by CAA's receiving financial assistance under this part through on-site inspections, or through other means, in order to ensure the effective provision of weatherization assistance for the dwelling units of low-income persons.

(b) DOE shall also carry out periodic evaluations of a program and weatherization projects that are not carried

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out by a CAA and that are receiving financial assistance under this part.

(c) The Secretary and the appropriate Support Office Director, the Comptroller General of the United States, and for a weatherization project carried out by a CAA, the Secretary of Health and Human Services or any of their duly authorized representatives, shall have access to any books, documents, papers, information, and records of any weatherization project receiving financial assistance under the Act for the purpose of audit and examination.

(d) Each grantee shall ensure that audits by or on behalf of subgrantees are conducted with reasonable frequency, on a continuing basis, or at scheduled intervals, usually annually, but not less frequently than every two years, in accordance with 10 CFR part 600, and OMB Circular 110, Attachment F, as applicable.

(e) The Secretary may reserve from the funds appropriated for any fiscal year an amount not to exceed 10 percent to provide, directly or indirectly, training and technical assistance to any grantee or subgrantee. Such training and technical assistance may include providing information concerning conservation practices to occupants of eligible dwelling units.

[49 FR 3629, Jan. 27, 1984, as amended at 58 FR 12529, Mar. 4, 1993]

§ 440.24 Recordkeeping.

Each grantee or subgrantee receiving Federal financial assistance under this part shall keep such records as DOE shall require, including records which fully disclose the amount and disposition by each grantee and subgrantee of the funds received, the total cost of a weatherization project or the total expenditure to implement the State plan for which assistance was given or used, the source and amount of funds for such project or program not supplied by DOE, the average costs incurred in weatherization of individual dwelling units, the average size of the dwelling being weatherized, the average income of households receiving assistance under this part, and such other records as DOE deems necessary for an effective audit and performance evaluation. Such recordkeeping shall be in accordance with the DOE Financial Assist-

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ance Rule, 10 CFR part 600, and any further requirements of this part.

[58 FR 12529, Mar. 4, 1993]

§ 440.25 Reports.

DOE may require any recipient of financial assistance under this part to provide, in such form as may be prescribed, such reports or answers in writing to specific questions, surveys, or questionnaires as DOE determines to be necessary to carry out its responsibilities or the responsibilities of the Secretary of Health and Human Services under this part.

(Approved by the Office of Management and Budget under control number 1901-0127)

§§ 440.26–440.29 [Reserved]

§ 440.30 Administrative review.

(a) An applicant shall have 20 days from the date of receipt of a decision under § 440.12 or § 440.13 to file a notice requesting administrative review. If an applicant does not timely file such a notice, the decision under § 440.12 or § 440.13 shall become final for DOE.

(b) A notice requesting administrative review shall be filed with the Support Office Director and shall be accompanied by a written statement containing supporting arguments and requesting, if desired, the opportunity for a public hearing.

(c) A notice or any other document shall be deemed filed under this section upon receipt.

(d) On or before 15 days from receipt of a notice requesting administrative review which is timely filed, the Support Office Director shall forward to the Deputy Assistant Secretary, the notice requesting administrative review, the decision under § 440.12 or § 440.13 as to which administrative review is sought, a draft recommended final decision for the concurrence of the Deputy Assistant Secretary, and any other relevant material.

(e) If the applicant requests a public hearing, the Deputy Assistant Secretary, within 15 days, shall give actual notice to the State and FEDERAL REGISTER notice of the date, place, time, and procedures which shall apply to the public hearing. Any public hearing

under this section shall be informal and legislative in nature.

(f) On or before 45 days from receipt of documents under paragraph (d) of this section or the conclusion of the public hearing, whichever is later, the Deputy Assistant Secretary shall concur in, concur in as modified, or issue a substitute for the recommended decision of the Support Office Director.

(g) On or before 15 days from the date of receipt of the determination under paragraph (f) of this section, the Governor may file an application, with a supporting statement of reasons, for discretionary review by the Assistant Secretary. On or before 15 days from filing, the Assistant Secretary shall send a notice to the Governor stating whether the Deputy Assistant Secretary's determination will be reviewed. If the Assistant Secretary grants review, a decision shall be issued no later than 60 days from the date review is granted. The Assistant Secretary may not issue a notice or decision under this paragraph without the concurrence of the DOE Office of General Counsel.

(h) A decision under paragraph (f) of this section shall be final for DOE if there is no review under paragraph (g) of this section. If there is review under paragraph (g) of this section, the decision thereunder shall be final for DOE, and no appeal shall lie elsewhere in DOE.

(i) Prior to the effective date of the termination of eligibility for further participation in the program because of failure to comply substantially with the requirements of the Act or of this part, a grantee shall have the right to written notice of the basis for the enforcement action and the opportunity for a public hearing notwithstanding any provisions to contrary of 10 CFR 600.26, 600.28(b), 600.29, 600.121(c), and 600.443. A notice under this paragraph shall be mailed by the Support Office Director by registered mail, return-receipt requested, to the State, local grantee, and other interested parties. To obtain a public hearing, the grantee must request an evidentiary hearing, with prior FEDERAL REGISTER notice, in the election letter submitted under Rule 2 of 10 CFR 1024.4 and the request

shall be granted notwithstanding any provisions of Rule 2 to the contrary.

[55 FR 41326, Oct. 10, 1990, as amended at 58 FR 12529, Mar. 4, 1993]

APPENDIX A—STANDARDS FOR WEATHERIZATION MATERIALS

The following Government standards are produced by the Consumer Product Safety Commission and are published in title 16, Code of Federal Regulations:

Thermal Insulating Materials for Building Elements Including Walls, Floors, Ceilings, Attics, and Roofs Insulation—organic fiber—conformance to Interim Safety Standard in 16 CFR part 1209;

Fire Safety Requirements for Thermal Insulating Materials According to Insulation Use—Attic Floor—insulation materials intended for exposed use in attic floors shall be capable of meeting the same flammability requirements given for cellulose insulation in 16 CFR part 1209;

Enclosed spaces—insulation materials intended for use within enclosed stud or joist spaces shall be capable of meeting the smoldering combustion requirements in 16 CFR part 1209.

The following standards which are not otherwise set forth in part 440 are incorporated by reference and made a part of part 440. The following standards have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on April 5, 1993 and a notice of any change in these materials will be published in the FEDERAL REGISTER. The standards incorporated by reference are available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street, suite 700, Washington, DC.

The standards incorporated by reference in part 440 can be obtained from the following sources:

Air Conditioning and Refrigeration Institute, 1501 Wilson Blvd., Arlington, VA 22209; (703) 524-8800.

American Gas Association, 1515 Wilson Blvd., Arlington, VA 22209; (703) 841-8400.

American National Standards Institute, Inc., 1430 Broadway, New York, NY 10018; (212) 642-4900.

American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY 10017; (212) 705-7800.

American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103; (215) 299-5400.

American Architectural Manufacturers Association, 1540 East Dundee Road, Palatine, IL 60067; (708) 202-1350.

Federal Specifications, General Services Administration, Specifications Section,

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Room 6654, 7th and D Streets, SW, Washington, DC 20407; (202) 708–5082.
Gas Appliance Manufacturers Association, 1901 Moore St., Arlington, VA 22209; (703) 525–9565.

National Electrical Manufacturers Association, 2101 L Street, NW, Suite 300, Washington, DC 20037; (202) 457–8400.

National Fire Protection Association, Batterymarch Park, P.O. Box 9101, Quincy, MA 02269; (617) 770–3000.

National Standards Association, 1200 Quince Orchard Blvd., Gaithersburg, MD 20878; (301) 590–2300. (NSA is a local contact for materials from ASTM).

National Wood Window and Door Association, 1400 East Touhy Avenue, Des Plaines, IL 60018; (708) 299–5200.

Sheet Metal and Air Conditioning Contractors Association, P.O. Box 221230, Chantilly, VA 22022–1230; (703) 803–2980.

Steel Door Institute, 712 Lakewood Center North, 14600 Detroit Avenue, Cleveland, OH 44107; (216) 899–0100.

Steel Window Institute, 1230 Keith Building, Cleveland, OH 44115; (216) 241–7333.

Tubular Exchanger Manufacturers Association, 25 North Broadway, Tarrytown, NY 10591; (914) 332–0040.

Underwriters Laboratories, Inc., P.O. Box 75530, Chicago, IL 60675–5330; (708) 272–8800.
More information regarding the standards in this reference can be obtained from the following sources:

Environmental Protection Agency, 401 M Street, NW, Washington, DC 20006; (202) 554–1080.

National Institute of Standards and Technology, U.S. Department of Commerce, Gaithersburg, MD 20899, (301) 975–2000

Weatherization Assistance Programs Division, Conservation and Renewable Energy, Mail Stop 5G–023, Forrestal Bldg, 1000 Independence Ave, SW, Washington, DC 20585; (202) 586–2207.

THERMAL INSULATING MATERIALS FOR BUILDING ELEMENTS INCLUDING WALLS, FLOORS, CEILINGS, ATTICS, AND ROOFS

[Standards for conformance]

Insulation—mineral fiber:	
Blanket insulation	ASTM ¹ C665–88.
Roof insulation board	ASTM C726–88.
Loose-fill insulation	ASTM C764–88.
Insulation—mineral cellular:	
Vermiculite loose-fill insulation.	ASTM C516–80 (1990).
Perlite loose-fill insulation ...	ASTM C549–81 (1986).
Cellular glass insulation block.	ASTM C552–88.
Perlite insulation board	ASTM C728–89a.
Insulation—organic fiber:	
Cellulosic fiber insulating board.	ASTM C208–72 (1982).

THERMAL INSULATING MATERIALS FOR BUILDING ELEMENTS INCLUDING WALLS, FLOORS, CEILINGS, ATTICS, AND ROOFS—Continued

[Standards for conformance]

Cellulose loose-fill insulation	ASTM C739–88.
Insulation—organic cellular:	
Preformed block-type polystyrene insulation.	ASTM C578–87a.
Rigid preformed polyurethane insulation board.	ASTM C591–85.
Polyurethane or polyisocyanurate insulation board faced with aluminum foil on both sides.	FS ² HH–I–1972/1 (1981).
Polyurethane or polyisocyanurate insulation board faced with felt on both sides.	FS HH–I–1972/2 (1981). And Amendment 1, October 3, 1985.
Insulation—composite boards:	
Mineral fiber and rigid cellular polyurethane composite roof insulation board.	ASTM C726–88.
Perlite board and rigid cellular polyurethane composite roof insulation.	ASTM C984–83.
Gypsum board and polyurethane or polyisocyanurate composite board.	FS HH–I–1972/4 (1981).
Materials used as a patch to reduce infiltration through the building envelope.	Commercially available.

¹ ASTM indicates American Society for Testing and Materials.

² FS indicates Federal Specifications.

THERMAL INSULATING MATERIALS FOR PIPES, DUCTS, AND EQUIPMENT SUCH AS BOILERS AND FURNACES

[Standards for conformance]

Insulation—mineral fiber:	
Preformed pipe insulation ...	ASTM ¹ C547–77.
Blanket and felt insulation (industrial type).	ASTM C553–70 (1977).
Blanket insulation and blanket type pipe insulation (metal-mesh covered) (industrial type).	ASTM C592–80.
Block and board insulation	ASTM C612–83.
Spray applied fibrous insulation for elevated temperature.	ASTM C720–89.
High-temperature fiber blanket insulation.	ASTM C892–89.
Duct work insulation	Selected and applied according to ASTM C971–82.
Insulation—mineral cellular:	
Diatomaceous earth block and pipe insulation.	ASTM C517–71 (1979)

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THERMAL INSULATING MATERIALS FOR PIPES, DUCTS, AND EQUIPMENT SUCH AS BOILERS AND FURNACES—Continued

[Standards for conformance]

Calcium silicate block and pipe insulation.	ASTM C533–85 (1990).
Cellular glass insulation	ASTM C552–88.
Expanded perlite block and pipe insulation.	ASTM C610–85.
Insulation—Organic Cellular: Preformed flexible elastomeric cellular insulation in sheet and tubular form.	ASTM C534–88.
Unfaced preformed rigid cellular polyurethane insulation.	ASTM C591–85.
Insulation skirting	Commercially available.

¹ASTM indicates American Society for Testing and Materials.

FIRE SAFETY REQUIREMENTS FOR INSULATING MATERIALS ACCORDING TO INSULATION USE

[Standards for conformance]

Attic floor	Insulation materials intended for exposed use in attic floors shall be capable of meeting the same smoldering combustion requirements given for cellulose insulation in ASTM ¹ C739–88.
Enclosed space.	Insulation materials intended for use within enclosed stud or joist spaces shall be capable of meeting the smoldering combustion requirements in ASTM C739–88.
Exposed interior walls and ceilings.	Insulation materials, including those with combustible facings, which remain exposed and serve as wall or ceiling interior finish, shall have a flame spread classification not to exceed 150 (per ASTM E84–89a).
Exterior envelope walls and roofs.	Exterior envelope walls and roofs containing thermal insulations shall meet applicable local government building code requirements for the complete wall or roof assembly.
Pipes, ducts, and equipment.	Insulation materials intended for use on pipes, ducts and equipment shall be capable of meeting a flame spread classification not to exceed 150 (per ASTM E84–89a).

¹ ASTM indicates American Society for Testing and Materials.

STORM WINDOWS

[Standards for conformance]

Storm windows: Aluminum insulating storm windows.	ANSI/AAMA ¹ 1002.10–83.
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STORM WINDOWS—Continued

[Standards for conformance]

Aluminum frame storm windows.	ANSI/AAMA 1002.10–83.
Wood frame storm windows.	ANSI/NWWDA ² I.S. 2–87. (Section 3)
Rigid vinyl frame storm windows.	ASTM ³ D4099–89.
Frameless plastic glazing storm.	Required minimum thickness windows is 6 mil (.006 inches).
Movable insulation systems for windows.	Commercially available.

¹ANSI/AAMA indicates American National Standards Institute/American Architectural Manufacturers Association.

²ANSI/NWWDA indicates American National Standards Institute/National Wood Window & Door Association.

³ASTM indicates American Society for Testing and Materials.

STORM DOORS

[Standards for conformance]

Storm doors—Aluminum: Storm Doors	ANSI/AAMA ¹ 1102.7–89.
Sliding glass storm doors.	ANSI/AAMA 1002.10–83.
Wood storm doors	ANSI/NWWDA ² I.S. 6–86.
Rigid vinyl storm doors ...	ASTM ³ D3678–88.
Vestibules: Materials to construct vestibules.	Commercially available.
Replacement windows: Aluminum frame windows.	ANSI/AAMA 101–88.
Steel frame windows ..	Steel Window Institute recommended specifications for steel windows, 1990.
Wood frame windows	ANSI/NWWDA I.S. 2–87.
Rigid vinyl frame windows.	ASTM D4099–89.

¹ANSI/AAMA indicates American National Standards Institute/American Architectural Manufacturers Association.

²ANSI/NWWDA indicates American National Standards Institute/National Wood Window & Door Association.

³ASTM indicates American Society for Testing and Materials.

REPLACEMENT DOORS

[Standards for conformance]

Replacement doors—Hinged doors: Steel doors	ANSI/SDI ¹ 100–1985.
Wood doors: Flush doors	ANSI/NWWDA ² I.S. 1–87. (exterior door provisions)
Pine, fir, hemlock and spruce doors.	ANSI/NWWDA I.S. 6–86.
Sliding patio doors: Aluminum doors	ANSI/AAMA ³ 101–88.

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REPLACEMENT DOORS—Continued

[Standards for conformance]

Wood doors	NWWDA I.S. 3–83.
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¹ ANSI/SDI indicates American National Standards Institute/Steel Door Institute.
² ANSI/NWWDA indicates American National Standards Institute/National Wood Window & Door Association.
³ ANSI/AAMA indicates American National Standards Institute/American Architectural Manufacturers Association.

CAULKS AND SEALANTS:

[Standards for conformance]

Caulks and sealants:	
Putty	FS ¹ TT–P–00791B, October 16, 1969 and Amendment 2, March 23, 1971.
Glazing compounds for metal sash.	ASTM ² C669–75 (1989).
Oil and resin base caulks.	ASTM C570–72 (1989).
Acrylic (solvent types) sealants.	FS TT–S–00230C, February 2, 1970 and Amendment 2, October 9, 1970.
Butyl rubber sealants ..	FS TT–S–001657, October 8, 1970.
Chlorosulfonated polyethylene sealants.	FS TT–S–00230C, February 2, 1970 and Amendment 2, October 9, 1970.
Latex sealing compounds.	ASTM C834–76 (1986).
Elastomeric joint sealants (normally considered to include polysulfide, polyurethane, and silicone).	ASTM C920–87.
Preformed gaskets and sealing materials.	ASTM C509–84.

¹ FS indicates Federal Specifications.
² ASTM indicates American Society for Testing and Materials.

WEATHERSTRIPPING

[Standards for conformance]

Weatherstripping	Commercially available.
Vapor retarders	Selected according to the provisions cited in ASTM ¹ C755–85 (1990). Permeance not greater than 1 perm when determined according to the desiccant method described in ASTM E96–90.
Items to improve attic ventilation.	Commercially available.
Clock thermostats	NEMA ² DC 3–1989.

¹ ASTM indicates American Society for Testing and Materials.

² NEMA indicates National Electrical Manufacturers Association.

HEAT EXCHANGERS

[Standards for conformance]

Heat exchangers, water-to-water and steam-to-water.	ASME ¹ Boiler and Pressure Vessel Code, 1992, Sections II, V, VIII, IX, and X, as applicable to pressure vessels. Standards of Tubular Exchanger Manufacturers Association, Seventh Edition, 1988.
Heat exchangers with gas-fired appliances ² .	Conformance to AGA ³ Requirements for Heat Reclaimer Devices for Use with Gas-Fired Appliances No. 1–80, June 1, 1980. AGA Laboratories Certification Seal.
Heat pump water heating heat recovery systems.	Electrical components to be listed by UL. ⁴

¹ ASME indicates American Society of Mechanical Engineers.
² The heat reclaimer is for installation in a section of the vent connector from appliances equipped with draft hoods or appliances equipped with powered burners or induced draft and not equipped with a draft hood.
³ AGA indicates American Gas Association.
⁴ UL indicates Underwriters Laboratories.

BOILER/FURNACE CONTROL SYSTEMS

[Standards for conformance]

Automatic set back thermostats.	Listed by UL. ¹ Conformance to NEMA ² DC 3–1989.
Line voltage or low voltage room thermostats.	NEMA DC 3–1989.
Automatic gas ignition systems.	ANSI ³ Z21.21–1987 and Z21.21a–1989. AGA ⁴ Laboratories Certification Seal.
Energy management systems.	Listed by UL.
Hydronic boiler controls ..	Listed by UL.
Other burner controls	Listed by UL.

¹ UL indicates Underwriters Laboratories.
² NEMA indicates National Electrical Manufacturers Association.
³ ANSI indicates American National Standards Institute.
⁴ AGA indicates American Gas Association.

WATER HEATER MODIFICATIONS

[Standards for conformance]

Insulate tank and distribution piping.	(See insulation section of this appendix).
Install heat traps on inlet and outlet piping.	Applicable local plumbing code.
Install/replace water heater heating elements.	Listed by UL ¹ .

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WATER HEATER MODIFICATIONS—Continued

[Standards for conformance]

Electric, freeze-prevention tape for pipes.	Listed by UL.
Reduce thermostat settings.	State or local recommendations.
Install stack damper, gas-fueled.	ANSI ² Z21.66–1988, including Exhibits A&B, and ANSI Z223.1–1988.
Install stack damper, oil-fueled.	UL 17, November 28, 1988, and NFPA ³ 31–1987.
Install water flow modifiers.	Commercially available.

¹ UL indicates Underwriters Laboratories.

² ANSI indicates American National Standards Institute.

³ NFPA indicates National Fire Prevention Association.

WASTE HEAT RECOVERY DEVICES

[Standards for conformance]

Desuperheater/water heaters.	ARI ¹ 470–1987.
Condensing heat exchangers.	Commercially available components and in new heating furnace systems to manufacturers' specifications.
Condensing heat exchangers.	Commercially available (Commercial, multi-story building, with teflon-lined tubes institutional) to manufacturers' specifications.
Energy recovery equipment.	Energy Recovery Equipment and Systems Air-to-Air (1978) Sheet Metal and Air Conditioning Contractors National Association (SMACNA). ²

¹ ARI indicates Air Conditioning and Refrigeration Institute.

² SMACNA denotes Sheet Metal and Air Conditioning Contractors' National Association.

BOILER REPAIR AND MODIFICATIONS/EFFICIENCY IMPROVEMENTS

[Standards for conformance]

Install gas conversion burners.	ANSI ¹ Z21.8–1984, (for gas or oil-fired systems) ANSI Z21.17–1984, ANSI Z21.17a–1990, and ANSI Z223.1–1988. AGA ² Laboratories Certification seal.
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BOILER REPAIR AND MODIFICATIONS/EFFICIENCY IMPROVEMENTS—Continued

[Standards for conformance]

Replace oil burner	UL ³ 296, February 28, 1989 Revision and NFPA ⁴ 31–1987.
Install burners (oil/gas)	ANSI Z223.1–1988 for gas equipment and NFPA 31–1987 for oil equipment.
Re-adjust boiler water temperature or install automatic boiler temperature reset control.	ASME ⁵ CSD–1–1988, ASME CSD–1a–1989, ANSI Z223.1–1988, and NFPA 31–1987.
Replace/modify boilers	ASME Boiler and Pressure Vessel Code, 1992, Sections II, IV, V, VI, VIII, IX, and X. Boilers must be Institute of Boilers and Radiation Manufacturers (IBR) equipment.
Clean heat exchanger, adjust burner air shutter(s), check smoke no. on oil-fueled equipment. Check operation of pump(s) and replacement filters.	Per manufacturers' instructions.
Repair combustion chambers.	Refractory linings may be required for conversions.
Replace heat exchangers, tubes.	Protection from flame contact with conversion burners by refractory shield.
Install/replace thermostatic radiator valves.	Commercially available. One pipe steam systems require air vents on each radiator; see manufacturers' requirements.
Install boiler duty cycle control system.	Commercially available. NFPA 70, National Electrical Code (NEC) 1993 and local electrical codes provisions for wiring.

¹ ANSI indicates American National Standards Institute.

² AGA indicates American Gas Association.

³ UL indicates Underwriters Laboratories.

⁴ NFPA indicates National Fire Prevention Association.

⁵ ANSI/ASME indicates American National Standards Institute/American Society of Mechanical Engineers.

HEATING AND COOLING SYSTEM REPAIRS AND TUNE-UPS/EFFICIENCY IMPROVEMENTS

[Standards for conformance]

Install duct insulation	FS ¹ HH-I–558C, January 7, 1992 (see insulation sections of this appendix).
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HEATING AND COOLING SYSTEM REPAIRS AND
TUNE-UPS/EFFICIENCY IMPROVEMENTS—Con-
tinued

[Standards for conformance]

Reduce input of burner; derate gas-fueled equipment.	Local utility company and procedures if applica- ble for gas-fueled fur- naces and ANSI ² Z223.1–1988 (NFPA ³ 54–1988) including Ap- pendix H.
Repair/replace oil-fired equipment.	NFPA 31–1987.
Replace combustion chamber in oil-fired fur- naces or boilers.	NFPA 31–1987.
Clean heat exchanger and adjust burner: ad- just air shutter and check CO ₂ and stack temperature. Clean or replace air filter on forced air furnace.	ANSI Z223.1–1988 (NFPA 54–1988) in- cluding Appendix H.
Install vent dampers for gas-fueled heating sys- tems.	Applicable sections of ANSI Z223.1–1988 (NFPA 54–1988) in- cluding Appendices H, I, J, and K. ANSI Z21.66–1988 and Ex- hibits A & B for elec- trically operated dampers.
Install vent dampers for oil-fueled heating sys- tems.	Applicable sections of NFPA 31–1987 for in- stallation and in con- formance with UL ⁴ 17, November 28, 1988.
Reduce excess combus- tion air: A: Reduce vent con- nector size of gas- fueled appliances. B: Adjust barometric draft regulator for oil fuels.	ANSI Z223.1–1988 (NFPA 54–1988) Part 9 and Appendices G & H. NFPA 31–1987 and per manufacturers' (fur- nace or boiler) instruc- tions.
Replace constant burning pilot with electric igni- tion device on gas- fueled furnaces or boil- ers.	ANSI Z21.71–1981, Z21.71a–1985, and Z21.71b–1989.
Readjust fan switch on draft air gas or oil- fueled furnaces.	Applicable sections and Appendix H of ANSI Z223.1–1988 (NFPA 54–1988) for gas fur- naces and NFPA 31– 1987 for oil furnaces.
Replace burners	See power burners (oil/ gas).
Install/replace duct fur- naces (gas).	ANSI Z223.1–1988 (NFPA 54–1988).
Install/replace heat pumps.	Listed by UL.

HEATING AND COOLING SYSTEM REPAIRS AND
TUNE-UPS/EFFICIENCY IMPROVEMENTS—Con-
tinued

[Standards for conformance]

Replace air diffusers, in- takes, registers, and grilles.	Commercially available.
Install/replace warm air heating metal ducts.	Commercially available.
Filter alarm units	Commercially available.

¹FS indicates Federal Specifications.
²ANSI indicates American National Standards Institute.
³NFPA indicates National Fire Prevention Association.
⁴UL indicates Underwriters Laboratories.

REPLACEMENT FURNACES, BOILERS, AND WOOD
STOVES

[Standards for conformance]

Chimneys, fireplaces, vents and solid fuel burning appliances.	NFPA ¹ 211–1988.
Gas-fired furnaces	ANSI ² Z21.47–1987, Z21.47a–1988, and Z21.47b–1989. ANSI Z223.1–1988 (NFPA 54–1988).
Oil-fired furnaces	UL ³ 727, August 27, 1991 Revision and NFPA 31–1987.
Liquified petroleum gas storage.	NFPA 58–1989.
Ventilation fans: Including electric attic, ceiling, and whole house fans.	UL 507, August 23, 1990 Revision.

¹NFPA indicates National Fire Prevention Association.
²ANSI indicates American National Standards Institute.
³UL indicates Underwriters Laboratories.

AIR CONDITIONERS AND COOLING EQUIPMENT

[Standards for conformance]

Air conditioners: Central air conditioners Room size units	ARI ¹ 210/240–1989. ANSI/AHAM ² RAC–1– 1982.
Other cooling equipment: Including evaporative coolers, heat pumps and other equipment.	UL ³ 1995, November 30, 1990. ⁴

¹ARI indicates Air Conditioning and Refrigeration Institute.
²AHAM/ANSI indicates American Home Appliance Manu-
facturers/American National Standards Institute.
³UL indicates Underwriters Laboratories.
⁴This standard is a general standard covering many dif-
ferent types of heating and cooling equipment.

SCREENS, WINDOW FILMS, AND REFLECTIVE
MATERIALS

[Standards for conformance]

Insect screens	Commercially avail- able.
Window films	Commercially avail- able.

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§ 451.2

SCREENS, WINDOW FILMS, AND REFLECTIVE MATERIALS—Continued

[Standards for conformance]

Shade screens:	
Fiberglass shade screens ...	Commercially available.
Polyester shade screens	Commercially available.
Rigid awnings:	
Wood rigid awnings	Commercially available.
Metal rigid awnings	Commercially available.
Louver systems:	
Wood louver systems	Commercially available.
Metal louver systems	Commercially available.
Industrial-grade white paint used as a heat-reflective measure on awnings, window louvers, doors, and exterior duct work (exposed).	Commercially available.

[58 FR 12529, Mar. 4, 1993]

PART 445—[RESERVED]

PART 451—RENEWABLE ENERGY PRODUCTION INCENTIVES

Sec.

- 451.1 Purpose and scope.
- 451.2 Definitions.
- 451.3 Who may apply.
- 451.4 What is a qualified renewable energy facility.
- 451.5 Where and when to apply.
- 451.6 Duration of incentive payments.
- 451.7 Metering requirements.
- 451.8 Application content requirements.
- 451.9 Procedures for processing applications.
- 451.10 Administrative appeals.

AUTHORITY: 42 U.S.C. § 7254; 42 U.S.C. § 13317.

SOURCE: 60 FR 36964, July 19, 1995, unless otherwise noted.

§ 451.1 Purpose and scope.

(a) The provisions of this part cover the policies and procedures applicable to the determinations by the Department of Energy (DOE) to make incentive payments for electric energy generated and sold by a qualified renewable energy facility owned by a State or nonprofit electric cooperative under the authority of 42 U.S.C. 13317.

(b) Determinations to make incentive payments under this part are not

subject to the provisions of 10 CFR part 600 and such payments shall not be construed to be financial assistance.

§ 451.2 Definitions.

As used in this part—

Closed-loop biomass means any organic material from a plant which is planted exclusively for purposes of being used at a qualified renewable energy facility to generate electricity or from a second harvesting of such a plant if planted before October 1, 1993.

Deciding Official means the Assistant Secretary for Energy Efficiency and Renewable Energy (or any DOE official to whom the authority of the Assistant Secretary may be redelegated by the Secretary of Energy).

DOE means the Department of Energy.

Finance Office means the DOE Office of the Chief Financial Officer (or any office to which that Office's authority may be redelegated by the Secretary of Energy).

Fiscal year means the Federal fiscal year beginning October 1 and ending on September 30 of the following calendar year.

Net electric energy means the metered kilowatt-hours (kWh) generated and sold, and excludes electric energy used within the renewable energy facility to power equipment such as pumps, motors, controls, lighting, heating, cooling, and other systems needed to operate the facility.

Nonprofit electrical cooperative means a cooperative association that is legally obligated to operate on a nonprofit basis and is organized under the laws of any State for the purpose of providing electric service to its members.

Renewable energy facility means a single module or unit, or an aggregation of such units, that generates electric energy which is independently metered and which results from the utilization of a renewable energy source.

Renewable energy source means solar heat, solar light, wind, geothermal energy, and biomass, except for—

- (1) Heat from the burning of municipal solid waste; or
- (2) Heat from a dry steam geothermal reservoir which—